REMARKS/ARGUMENTS

Claims 1-2, 5-6, 9-10 and 12 are rejected under 35 U.S.C. § 103(a) as being obvious in view of the Halvorsen *et al.* reference (U.S. Patent App. Pub. No. 2001/0041708). Claims 1 and 3-8 are also rejected as being obvious in view of Halvorsen *et al.* in combination with Alviar *et al.* (U.S. Patent No. 6,413,545). Because of the similarity in these rejections in relying on the teachings of Halvorsen *et al.*, these rejections will be addressed together. Applicants traverse these rejections for the reasons provided below.

Claim 1 is directed to a composition comprising a combination of conjugated linoleic acid and caffeine in which the conjugated linoleic acid/caffeine mass ratio ois between 1 and 15, Claims 2, 5-6, 9-10 and 12 all depend directly from claim 1 and incorporate the limitations of their base claim. This claimed range ratio is based on an *in vivo* study in humans, as shown in the results disclosed in the examples (see pages 5-6 of the specification). This range ratio is very narrow.

The Examiner has calculated that the mass ratio disclosed in Halvorsen *et al.* is between 0.05 and 200, which range encompasses the narrower range between 1 to 15 presently claimed. The Examiner thus considers that it was *prima facie* obvious to establish this range since it lies inside ranges disclosed by the prior art.

First, Applicants emphasize that no mass ratios were specifically disclosed in Halvorsen *et al.*, but instead were calculated by the Examiner in a manner such that they are not applicable to the presently claimed oral compositions. The calculation done by the Examiner is based on paragraph [0013] which stated that the skin care composition comprises from about 0.1% to about 10% by weight of 10-trans, 12-cis conjugated linoleic acid, and on paragraph [0053] which recites that the xanthine employed in the inventive method is preferably in an amount of at least 0.05%, generally from 0.05 to 20%. It is stated in paragraph [0047] that "the methods of the present invention involve topically applying to the skin an effective amount of the skin care composition of the invention." Thus, the ranges stated in paragraphs [0013] and [0053] are relative to topical compositions and not to oral compositions. Consequently, the range calculated by the Examiner relates to topical compositions.

One of ordinary skill in the art knows that fundamental pharmacokinetic differences exist between topical and oral routes, and would not have had a reason to select the same range for an oral application and for a topical application. Thus, the claimed range is not taught or suggested by the ranges disclosed by Halvorsen *et al.*

Furthermore, even if one of skill in the art would have had a reason to select the ranges suggested by Halvorsen *et al.*, there would have been no reason to choose the specific ratio of the present claims, which is very narrow in comparison to the broad range of Halvorsen *et al.* Applicants therefore reiterate that the disclosure of Halvorsen *et al.* does not teach or suggest the ranges within the present claims.

Accordingly, for the reasons provided above, Applicants request that these rejections based on the Halvorsen *et al.* reference be withdrawn.

CONCLUSION

In view of the aforementioned amendments and remarks, Applicants respectfully submit that the rejections of the claims under 35 U.S.C. §103(a) are overcome. Accordingly, Applicants submit that this application is now in condition for allowance. Early notice to this effect is solicited.

It is not believed that extensions of time or fees for net addition of claims are required. However, in the event that extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 C.F.R. §1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,

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